

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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LINKSMART WIRELESS TECHNOLOGY,  
LLC,  
  
v.  
  
CAESARS ENTERTAINMENT  
CORPORATION, *et al.*,  
  
Defendants.

Case No. 2:18-cv-00862-MMD-NJK  
CLAIM CONSTRUCTION ORDER

**I. SUMMARY**

Plaintiff Linksmart Wireless Technology, LLC alleges that Defendants Caesars Entertainment Corporation, Golden Nugget, Inc., Landry's Inc., Las Vegas Sands Corp., MGM Resorts International, and Wynn Las Vegas LLC infringe U.S. Reissued Patent No. RE46,459 (the "'459 Patent") (ECF No. 1-1)<sup>1</sup> in this consolidated patent case<sup>2</sup> because they have systems at their hotels that ask guests for login information the first time those guests connect to the WiFi. (ECF No. 1.) This Order addresses the disputed claim terms the parties presented for the Court to construe.

**II. BACKGROUND**

The background facts included in this paragraph are adapted from the Complaint. (ECF No. 1.) The '459 Patent is entitled "User specific automatic data redirection system." (*Id.* at 2.) The '459 Patent claims priority to U.S. Provisional Pat. App. No. 60/084,014 (the "'014 Application"), filed on May 4, 1998 (ECF No. 1-2 at 2), which primarily consists of a

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<sup>1</sup>The '459 Patent reissued from U.S. Patent No. 6,779,118 (the '118 Patent). (ECF No. 110 at 5.)

<sup>2</sup>The Court consolidated Case Nos. 2:18-cv-00864-MMD-NJK, 2:18-cv-00865-MMD-NJK, 2:18-cv-00867-MMD-NJK, and 2:18-cv-00868-MMD-NJK under this case number. (ECF No. 45.)

1 report authored by the '459 Patent's co-inventors (ECF No. 1 at 4). The '459 Patent  
2 centers on an allegedly novel and innovative system featuring a "redirection server" that  
3 mediates an end user's internet access based on rules regarding parameters such as  
4 time, or the location from which an end user is accessing the internet. (*Id.* at 4-6.) The  
5 redirection server can therefore filter the end user's requests based on rules programmed  
6 in the redirection server. (*Id.* at 5-6.) "By way of example, rule sets could be programmed  
7 such that a user would need to access a location, e.g., a page with advertising, before  
8 being able to freely surf the Web." (*Id.* at 6.) Plaintiff alleges Defendants infringe claims  
9 91-99, 108-120, and 122-125 of the '459 Patent. (ECF No. 110 at 8 n.4.)

10 Both the '459 Patent and the '118 Patent were previously litigated, and the '118  
11 Patent was subject to six reexamination proceedings and the reissue proceedings that  
12 resulted in the '459 Patent. (ECF No. 110 at 6.) The Court is therefore not construing the  
13 '459 Patent on a blank slate. More specifically, the '118 Patent was litigated in the Eastern  
14 District of Texas, where United States Magistrate Judge Charles Everingham issued a  
15 claim construction order construing terms similar to the terms at issue here on June 30,  
16 2010. (ECF No. 110-6 (the "Texas Order").) Further, the Patent Trial and Appeal Board  
17 ("PTAB") of the United States Patent and Trademark Office ("USPTO") declined to institute  
18 an Inter Partes Review ("IPR") proceeding filed by Panasonic Avionics Corp (the  
19 "Panasonic IPR") regarding the '459 Patent on May 14, 2019. (ECF No. 110-5 ("Panasonic  
20 IPR Order").) While it is not, of course, a claim construction order, the Panasonic IPR  
21 Order also contained some discussion of disputed claim terms addressed in this order.  
22 (*Id.*) Moreover, the Panasonic IPR features prominently in the parties' arguments  
23 regarding the "redirection server" term. In addition, District Judge Andrew J. Guilford of  
24 the Central District of California issued an order construing certain terms in the '459  
25 Patent—which substantially overlap with the disputed terms here—in a different litigation  
26 involving the '459 Patent on December 13, 2019. (ECF No. 110-13 (the "California  
27 Order").) The parties also rely on the both the Texas Order and the California Order to  
28

1 support their claim construction arguments.<sup>3</sup> (ECF Nos. 110, 111, 113, 114.) The Court  
 2 will therefore refer to these past decisions to the extent it deems appropriate in the  
 3 discussion below.<sup>4</sup>

4 The Court held a claim construction hearing on May 4, 2020. (ECF No. 134 (the  
 5 “Hearing”).) Counsel for Plaintiff and Defendants offered argument on the disputed and  
 6 allegedly indefinite terms discussed below. In pertinent part, Plaintiff’s counsel stated at  
 7 the Hearing he would also be amenable to a construction of “user’s rule set” / “users’ rule  
 8 set” as “a set of rules that apply during a user’s or users’ session,” which differs from the  
 9 construction Plaintiff proposed in its briefing. The Court refers to the Hearing below when  
 10 applicable.

### 11 **III. LEGAL STANDARD**

12 Patent claim construction is a question of law for the Court. *See Markman v.*  
 13 *Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). When interpreting claims, a court’s  
 14 primary focus should be on the intrinsic evidence of record, which consists of the claims,  
 15 the specification, and the prosecution history. *See Phillips v. AWH Corp.*, 415 F.3d 1303,  
 16 1314-17 (Fed. Cir. 2005) (en banc). The Court should begin by examining the claim  
 17 language. *See id.* at 1312. Claim language should be viewed through the lens of a person  
 18 of “ordinary skill in the relevant art at the time of the invention.” *SanDisk Corp. v. Memorex*  
 19 *Prods., Inc.*, 415 F.3d 1278, 1283 (Fed. Cir. 2005). If the claim language is clear on its  
 20 face, then consideration of the other intrinsic evidence is limited “to determining if a

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 22 <sup>3</sup>As a particularly pertinent example, Plaintiff states in its responsive claim  
 23 construction brief it is amenable to the construction of “redirection server” adopted in the  
 24 California Order, which is “a server that at least must be capable of redirecting a user to a  
 25 network location that is different from the network location in the user’s request.” (ECF No.  
 26 113 at 5.) This differs from the construction proposed in Plaintiff’s opening brief. Similarly,  
 Plaintiff stated it was fine with ‘no construction necessary,’ as adopted in the California  
 Order, instead of ‘plain and ordinary meaning’ as requested in its opening claim  
 construction brief, for the term “Redirection Server Programmed With A [User’s/Users’]  
 Rule Set[.]” (*Id.* at 7.)

27 <sup>4</sup>The Court also notes this is not the first order it has issued in this case. The Court  
 28 previously denied Defendants’ motions to dismiss, agreeing with Plaintiff that the ‘459  
 Patent is directed to a solution to a problem specifically arising in the realm of computer  
 networking. (ECF No. 112.)

1 deviation from the clear language of the claims is specified.” *Interactive Gift Exp., Inc. v.*  
2 *Compuserve Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001).

3 A court should give the claim’s words their “ordinary and customary meaning.”  
4 *Phillips*, 415 F.3d at 1312-13 (quotation omitted). In construing a claim term’s ordinary  
5 meaning, the context in which a term is used must be considered. See *ACTV, Inc. v. Walt*  
6 *Disney Co.*, 346 F.3d 1082, 1088 (Fed. Cir. 2003). Both asserted and unasserted claims  
7 of the patent also can add meaning to a disputed claim term as claim terms normally are  
8 used consistently throughout the patent. See *Phillips*, 415 F.3d at 1314.

9 “[C]laims must be read in view of the specification, of which they are a part.” *Id.* at  
10 1315 (quotation omitted). The specification can offer “practically incontrovertible directions  
11 about a claim meaning.” *Abbott Labs. v. Sandoz, Inc.*, 566 F.3d 1282, 1288 (Fed. Cir.  
12 2009). “When consulting the specification to clarify the meaning of claim terms, courts  
13 must take care not to import limitations into the claims from the specification.” *Id.*  
14 “[A]lthough the specification may well indicate that certain embodiments are preferred,  
15 particular embodiments appearing in the specification will not be read into claims when  
16 the claim language is broader than such embodiments.” *Tate Access Floors, Inc. v.*  
17 *Maxcess Techns., Inc.*, 222 F.3d 958, 966 (Fed. Cir. 2000) (quotation omitted). “By the  
18 same token, the claims cannot enlarge what is patented beyond what the inventor has  
19 described in the invention.” *Abbott Labs.*, 566 F.3d at 1288 (internal quotation omitted).  
20 “Likewise, inventors and applicants may intentionally disclaim, or disavow, subject matter  
21 that would otherwise fall within the scope of the claim.” *Id.*

22 In addition to the specification, a court should consider the patent’s prosecution  
23 history, which consists of “the complete record of the proceedings before the PTO and  
24 includes the prior art cited during the examination of the patent.” *Phillips*, 415 F.3d at 1317.  
25 However, because the prosecution represents an “ongoing negotiation” rather than the  
26 “final product” of the negotiation, “it often lacks the clarity of the specification and thus is  
27 less useful for claim construction purposes.” *Id.* Consulting the prosecution history can,  
28 however, be helpful in determining whether the patentee disclaimed an interpretation

during prosecution. See *Research Plastics, Inc. v. Federal Packaging Corp.*, 421 F.3d 1290, 1296 (Fed. Cir. 2005). “Under the doctrine of prosecution disclaimer, a patentee may limit the meaning of a claim term by making a clear and unmistakable disavowal of scope during prosecution.” *Purdue Pharma L.P. v. Endo Pharm. Inc.*, 438 F.3d 1123, 1136 (Fed. Cir. 2006).

If the claim language is not clear after reviewing all intrinsic evidence, then the Court may refer to extrinsic evidence such as expert testimony, inventor testimony, dictionaries, and learned treatises. See *Zodiac Pool Care, Inc. v. Hoffinger Indus., Inc.*, 206 F.3d 1408, 1414 (Fed. Cir. 2000).

#### IV. DISCUSSION

The parties have narrowed<sup>5</sup> the contested claim terms to three sets of terms in the ’459 Patent, and Defendants contend an additional four sets of claim terms are indefinite. (ECF Nos. 110, 111.) Summaries of their proposed constructions of each disputed term are presented in comparison charts below. The Court will address each of the disputed terms, followed by the terms Defendants contend are indefinite.

##### A. Disputed Terms

##### 1. “redirection server” (claims 91-99, 108-120, 122, and 125)

Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
“a server logically located between the user’s computer and a network that controls the user’s access to the network and is capable of redirecting a user to a network location that is different from the network location in the user’s request”	“a server configured to redirect a user to a location on the public network that is different from the network location in the user’s request”

The parties’ primary dispute as to this term is whether the redirection server must redirect a user to a different location on the public network, as Defendants argue, or simply to some location other than the location the user requested, as Plaintiff argues. (ECF Nos.

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<sup>5</sup>The parties agree on the construction of four sets of claim terms. (ECF No. 110 at 7-8.)

110 at 9, 111 at 7.) Plaintiff’s proposed construction is broader because it includes redirection to a location on a private network as well as a public network. (ECF No. 110 at 9.)

Plaintiff argues its proposed construction is consistent with the intrinsic evidence, along with constructions adopted in the Texas Order and the Panasonic IPR Order. (*Id.* at 8-10.) Plaintiff further argues that Defendants seek to improperly import a limitation—that the user is redirected to a location on the public network—without the requisite clear and unambiguous intent from the patentees that they wanted to impose this limitation. (*Id.* at 9.) Defendants counter that the intrinsic evidence and Plaintiff’s own arguments to the PTAB in the Panasonic IPR support their view that the redirection must be to a location on the public network. (ECF No. 111 at 7.) Defendants further argue there is no support in the intrinsic record for redirection to a private network, as Plaintiff argues, and distinguished prior art on that basis before the PTAB in the Panasonic IPR—where Plaintiff argued that its invention was innovative because it redirected users to other locations on the public internet. (*Id.* at 8, 10.) Defendants therefore argue that Plaintiff disclaimed the construction it seeks here in the Panasonic IPR. (*Id.* at 10.) Defendants also argue Plaintiff’s proposed construction excludes an embodiment. (*Id.* at 10-11.)

The Court agrees with Defendants because the Court finds Plaintiff disclaimed the construction it seeks here in the Panasonic IPR. While all parties argue Plaintiff’s brief opposing institution of the Panasonic IPR and the Panasonic IPR Order support their position, having reviewed those documents, the Court agrees with Defendants that Plaintiff specifically argued in the Panasonic IPR that the innovation embodied in the ’459 Patent is the redirection server’s ability to redirect a user from one public network location to the other. It would therefore violate the doctrine of prosecution history disclaimer—and be unfair—were the Court to adopt Plaintiff’s proposed construction here.

To start, the Federal Circuit has extended the doctrine of prosecution history disclaimer to statements made during IPR proceedings. *See Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1362 (Fed. Cir. 2017) (“we hold that statements made by a patent



1 owner during an IPR proceeding, whether before or after an institution decision, can be  
2 considered for claim construction and relied upon to support a finding of prosecution  
3 disclaimer.”). Thus, the Court will examine the statements Plaintiff made in successfully  
4 resisting the institution of the Panasonic IPR.

5 In that proceeding, Plaintiff explained that the “’459 patent’s claims are directed to  
6 a system for Internet access in a server that dynamically redirects a user requesting  
7 access to an Internet site, a ‘redirection server,’ based on rules.” (ECF No. 111-6 at 9.)  
8 Based on these rules, “the redirection server may modify the user’s request for an Internet  
9 location to redirect it to a different Internet location.” (*Id.*) Plaintiff later stated in that same  
10 brief opposing institution of the Panasonic IPR that “[r]edirection’ of a user accessing the  
11 Internet is central to the patented invention.” (*Id.* at 13 (internal quotation marks omitted).)  
12 Plaintiff further elaborated that the ’459 Patent’s redirection server redirects the user from  
13 one internet location to another internet location. (*Id.* at 14.) Plaintiff later characterized its  
14 own position in a prior reexamination proceeding as arguing that “the prior art failed to  
15 teach a ‘redirection server’ because the credential server did not ‘redirect a request for  
16 one Internet site to a different Internet site.’” (*Id.* at 19.) “Consistent with Linksmart’s prior  
17 statement to the Board, the ’459 patent uniformly describes “redirection” as modifying a  
18 user’s request for an Internet network location to request a different Internet network  
19 location.” (*Id.*) Plaintiff made other statements like this throughout its brief, including in  
20 distinguishing a prior art reference referred to as Malkin. (*Id.* at 20, 21-24.)

21 The PTAB was persuaded by Plaintiff’s arguments and declined to institute the  
22 Panasonic IPR. (ECF No. 111-7.) And in the Panasonic IPR Order, the PTAB indicated it  
23 was persuaded by Plaintiff’s description of the redirection server summarized above  
24 because it found “that an essential function of the redirection server of the ’459 patent is  
25 to redirect users to Internet locations that are different from those in the user’s request.”  
26 (*Id.* at 13.) The PTAB summarized Plaintiff’s argument distinguishing Malkin as “Malkin  
27 does not teach redirecting the user’s data packages to any location on the Internet.” (*Id.*  
28 at 17.) The PTAB went on to agree with Plaintiff, finding that Malkin did not disclose the

1 claimed redirection server, and that the petitioner's two other cited references did not  
2 either, so the petitioner was unlikely to prevail on its obviousness challenge to the '459  
3 Patent. (*Id.* at 18-19.) The PTAB accordingly declined to institute the IPR. (*Id.* at 19, 21.)

4 Based on the summary of Plaintiff's argument in the Panasonic IPR provided  
5 above, the Court finds Plaintiff argued in the Panasonic IPR that the redirection server  
6 redirects the user from one internet—or public—location to another internet location, and  
7 the PTAB found that argument persuasive. Throughout Plaintiff's brief opposing institution  
8 of the Panasonic IPR, Plaintiff argued that the redirection server redirects a user from the  
9 location on the public internet the user requested to another location on the public internet  
10 based on the rule set applied to that user. *See supra*. Plaintiff also never argued in the  
11 Panasonic IPR that the redirection server must be configured to allow a user to be  
12 redirected to a private network location. Plaintiff's argument in the Panasonic IPR thus  
13 aligns with Defendants' proposed construction here, not Plaintiff's.

14 Plaintiff would like the Court to construe redirection server as allowing for  
15 redirection of a user's request to either a public or private network location. But Plaintiff  
16 cannot have it both ways. Plaintiff disclaimed the argument it makes here through its  
17 arguments in the Panasonic IPR. *See Aylus Networks*, 856 F.3d at 1362 (holding that  
18 statements made by a patent owner in an IPR proceeding may support a finding of  
19 prosecution history disclaimer at claim construction).

20 Plaintiff's argument to the contrary both in its responsive brief and at the Hearing—  
21 that Defendants take Plaintiff's statements in the Panasonic IPR out of context—is  
22 unpersuasive. (ECF No. 113 at 6-7.) Plaintiff specifically argues that it was merely  
23 attempting to distinguish Malkin because Malkin did not disclose a redirection server, and  
24 its statements discussed above "were not intended to require the redirection server to  
25 redirect to a public network[.]" (*Id.* at 7.) It is probably true that Plaintiff did not intend to  
26 estop itself from making the claim construction argument it attempts to make here. But  
27 that is exactly what Plaintiff did. Again, the Court finds Plaintiff argued in the Panasonic  
28 IPR that the redirection server must be configured to redirect a user to a location on the



1 public network different from the public network location the user requested, and the PTAB  
2 accepted this argument, though the PTAB's decision does not appear to have turned on  
3 its acceptance of this argument. (ECF No. 111-7 at 13-21 (declining to extensively discuss  
4 whether the redirection server must redirect a user from one public network location to  
5 another after stating that doing so is an essential function of the '459 Patent).) Thus,  
6 Plaintiff's approach in its responsive brief and at the Hearing of shifting attention away  
7 from what Plaintiff said the redirection server must do in the Panasonic IPR to what  
8 Malkin's redirection server did not do is ultimately unpersuasive.<sup>6</sup> (ECF No. 113 at 6-7.)

9 Moreover, the intrinsic evidence also favors adopting Defendant's proposed  
10 construction. As Defendants argue, the asserted claims require that the redirection server  
11 be programmed with a user's rule set to "control data passing between the user and a  
12 public network." (ECF No. 111 at 8 (citing the '459 Patent at claims 91-98, 108-111).)  
13 Thus, the redirection server must exert control over the user's interaction with the public  
14 network. And as Defendants also argue, while the asserted claims are silent as to whether  
15 the redirection server must redirect the user from a public network location to another  
16 public network location, they also do not explicitly specify that the redirection server must  
17 be capable of redirecting the user from some network location to a private network  
18 location. (*Id.*) Thus, the claim language itself does not explicitly favor either sides'  
19 construction. The Court will therefore look to the specification of the '459 Patent.

20 And even Plaintiff's counsel conceded at the Hearing that the specification of the  
21 '459 Patent exclusively contains examples of the redirection server redirecting a user from  
22 one public network location to the other. (ECF No. 1-1 ('459 Patent) at 5:27-8:29.) This  
23 weighs in favor of Defendants' proposed construction. *See Phillips*, 415 F.3d at 1315  
24 ("[C]laims must be read in view of the specification, of which they are a part.") (quotation

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26 <sup>6</sup>It does not appear that the defendants in the case from which the California Order  
27 issued made exactly the same argument Defendants make here. There, Judge Guilford  
28 only mentioned the statements the PTAB made in the Panasonic IPR Order, and made  
no reference to any arguments Plaintiff made in the underlying briefing. (ECF No. 110-13  
at 14.) Regardless, the Court disagrees with the construction of "redirection server"  
adopted in the California Order.

omitted). Instead, in response to a question from the Court, Plaintiff's counsel pointed to the following passage as the only support for Plaintiff's proposed construction in the specification:

It will also be clear that the invention may be implemented on a non-IP based networks which implement other addressing schemes, such as IPX, MAC addresses and the like. While the operational environment detailed in the preferred embodiment is that of an ISP connecting users to the Internet, it will be clear to one skilled in the art that the invention may be implemented in any application where control over users' access to a network or network resources is needed, such as a local area network, wide area network and the like. Accordingly, neither the environment nor the communications protocols are limited to those discussed.

(ECF No. 1-1 at 8:30-40.) Defendants' counsel responded to this contention at the Hearing by arguing that the asserted claims do not claim the alternate embodiment described in the passage above, and that their proposed construction of "redirection server" was more consistent with the claims when they are read in light of the specification. And the Court tends to agree. Reading the '459 Patent as a whole, the patentees were attempting to claim an invention including a redirection server capable of redirecting a user from one public network location to another.

In sum, because Plaintiff disclaimed the construction it now seeks in the Panasonic IPR and because the Court agrees with Defendant's arguments, the Court will adopt Defendants' proposed construction. The Court will construe "redirection server" to mean "a server configured to redirect a user to a location on the public network that is different from the network location in the user's request[.]"

**2. "user's rule set" / "users' rule set" (claims 91-99, 108-120, and 122-125)**

<b>Plaintiff's Proposed Construction</b>	<b>Defendants' Proposed Construction</b>
Elements or conditions that apply during a user's or users' session	set of rules that apply during and uniquely to a user's session or a group of users' sessions

The parties' key dispute as to this term is whether the rules are unique to a particular user or set of users. (ECF No. 110 at 13-14, 111 at 11-12.) Defendants argue they must

1 be. (ECF No. 111 at 11-12.) Defendants primarily rely on the specification to support this  
2 view. (*Id.*) Plaintiff's view, in contrast, is that more than one user or set of users can have  
3 the same rule set. (ECF No. 110 at 13-14.) Plaintiff argues its view is more consistent with  
4 the plain meaning of the claim terms and the specification. (*Id.*) But the Court again agrees  
5 with Defendants.

6 Plaintiff's counsel effectively conceded at the Hearing that Defendants' proposed  
7 construction is correct. First, though less importantly, he conceded Plaintiff was amenable  
8 to a construction that dropped Plaintiff's proposed 'elements or conditions,' resulting in a  
9 construction acceptable to Plaintiff of a "set of rules that apply during a user's or users'  
10 session." But this concession came in response to Defendants' persuasive argument that  
11 a "rule set" cannot be merely an "element," though Plaintiff's original proposed construction  
12 made the two equivalent. So it was a meaningful concession.

13 But more importantly, Plaintiff's counsel explained at the Hearing that, in Plaintiff's  
14 view, a user could initially get a standard rule set even though it would be correlated to a  
15 particular user or group of users as soon as the user identified herself (or group of users  
16 identified themselves), and thus became that user's rule set after being correlated to the  
17 user (or group of users). It appeared Plaintiff's counsel was trying to draw a distinction  
18 between "correlated to" and "unique to." But the Court finds this is a distinction without a  
19 difference. And that is why the Court finds Plaintiff's counsel's explanation at the hearing  
20 was an effective concession that Defendants' proposed construction is more correct. If all  
21 rule sets must be correlated to a particular user or group of users, it is illogical that rule  
22 sets could be shared amongst users or groups of users.<sup>7</sup>

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25 <sup>7</sup>Plaintiff also argues that if the Court adopts Defendants' proposed construction,  
26 the Court would also be adopting the view "that no rule set in the system can be the same,"  
27 which is inconsistent with the intrinsic evidence. (ECF No. 113 at 9.) The Court disagrees.  
28 A rule set can be unique to a user or group of users without being entirely unique, meaning  
the only rule set in the universe containing that particular set of rules. As explained  
throughout the specification of the '459 Patent, the rule set only has to be unique in the  
sense that it is personalized to, or particular to, a user.

1 As the term “user’s rule set” is used throughout the ’459 Patent, a rule set cannot  
2 apply to every possible user of the system. It must, as Defendants argue, be unique to a  
3 user or set of users. The Court begins with the claim language. In the asserted claims, the  
4 rule set is always described as “a user’s rule set” or “a users’ rule set” correlated to a  
5 temporarily-assigned network address. (See, e.g., ECF No. 1-1 at 19:62-20:54.) The use  
6 of “a” right before ‘user’s/users,’ combined with the rule set’s consistent combination with  
7 “a” temporarily-assigned network address, means that the rule set must be unique to that  
8 particular user or group of users. Said otherwise, the asserted claims consistently refer to  
9 one rule set that applies to a user or group of users identified by one particular temporarily-  
10 assigned network address. (See, e.g., *id.*) The rule set must therefore be unique to that  
11 user or particular set of users.

12 The specification also supports Defendants’ proposed construction, beginning with  
13 the title—“User Specific Automatic Data Redirection System.” (ECF No. 1-1 at 2.) A user-  
14 specific system is unique to that user. Further, and as Defendants argue (ECF No. 114 at  
15 10), other parts of the specification also point towards rule sets being specific to a  
16 particular user or group of users. For example, “[t]he rule sets specify elements or  
17 conditions about the user’s session.” (ECF No. 1-1 at 4:54-55.) By using “the” before  
18 “user’s,” the patent drafter is referring to one particular user. Similarly, the “Auto-Navi”  
19 functionality of the authentication server is capable of transmitting “the user’s new rule set”  
20 to the redirection server—or a new rule set unique to that user. (*Id.* at 5:33-34; see also  
21 *id.* at 6:10, 6:47, 7:35 (referring to “the user’s rule set”).) The Abstract also explains that  
22 the redirection server “receives the redirection rule sets for each user.” (*Id.* at 2.) Thus, the  
23 specification consistently describes rule sets as being unique to a particular user or set of  
24 users.

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In sum, the Court agrees with Defendants because the intrinsic evidence supports their view that the rule set or rule sets must be unique to a user or group of users.<sup>8</sup> The Court therefore finds that user's rule set" / "users' rule set" means "set of rules that apply during and uniquely to a user's session or a group of users' sessions[.]"

**3. "redirection server programmed with a user's rule set" / "redirection server programmed with a users' rule set" (claims 91-99, 108-120, and 122-125)**

Plaintiff's Proposed Construction	Defendants' Proposed Construction
plain and ordinary meaning. "Redirection server" and "[user's/users'] rule set" will be construed separately	"a redirection server that receives and implements an authenticated user's rule set"

While Plaintiff argues this claim does not require construction,<sup>9</sup> Defendants argue that, to function, the redirection server must receive a rule set from the accounting server keyed to a particular, authenticated user. (ECF Nos. 110 at 10-13, 111 at 13.) Defendants further argue this authentication concept is key to the entire purported invention, drawing logical inferences from the content of the specification. (ECF No. 111 at 13.) Plaintiff counters that Defendants seek to improperly import two limitations into the claim language because they do not identify language in the '459 Patent showing the patentees' clear intent to do so. (ECF No. 110 at 11.) As to authentication, Plaintiff argues adding such a limitation will confuse the jury because there is no such thing as an authenticated rule set in the '459 Patent, and Defendants merely point to preferred embodiments to support their proposed construction. (ECF No. 110 at 12-13.) The Court agrees with Plaintiff.

<sup>8</sup>Defendants' counsel stated at the Hearing they would also be amenable to "some but not all" as adopted in the California Order (ECF No. 110-13 at at 15-16) instead of "uniquely to," but the Court declines to adopt "some but not all." The Court is persuaded by Defendants' arguments as to this term, so would prefer to adopt Defendants' proposed construction in the absence of any compelling reason to adopt a fallback choice that Defendants argue does the same work as their first choice.

<sup>9</sup>While Plaintiff requested 'plain and ordinary meaning' in its opening brief (ECF No. 110 at 10), as noted above, Plaintiff indicated it is also amenable to 'no construction necessary' for this term. (ECF No. 113 at 7.)

1           The Court declines to specifically construe this term because the Court has already  
2 construed the term's two key sub-terms, so construing it further would lead to a confusing  
3 nested meaning for these terms. Further, the Court agrees with Plaintiff that construing  
4 this term in line with Defendants' proposal would improperly import limitations from the  
5 specifications into the claims. Beginning with the first point, were the Court to accept  
6 Defendants' proposal, "redirection server" and "user's rule set" would have different  
7 meanings when used separately than when they are combined with the term "programmed  
8 with." That could confuse the jury when it is asked to conduct the infringement analysis. It  
9 is also illogical, as claim terms should have the same meaning throughout a patent.  
10 Moreover, as the Court accepted Defendants' two other proposed constructions for  
11 "redirection server" and "user's rule set," were the Court to accept Defendants' proposed  
12 construction here, one way to read the term would be the confusingly nested "a server  
13 configured to redirect a user to a location on the public network that is different from the  
14 network location in the user's request that receives and implements an authenticated  
15 user's set of rules that apply during and uniquely to a user's session." That is unworkable.

16           Further, unlike "redirection server" and "user's rule set," where Defendants'  
17 proposed constructions had support in the asserted claims, Defendants only point to  
18 "user's rule set" in the asserted claims themselves to support their proposed construction  
19 as to this term. (ECF No. 111 at 13, 114 at 12.) But the Court has separately construed  
20 "user's rule set" above. And thus the Court is unpersuaded this same term also supports  
21 importing the authentication and receiving limitations that Defendants ask the Court to  
22 import here. Conversely, the Court is persuaded by Plaintiff's argument that it is improper  
23 to import the authentication and receiving limitations into this term because Defendants'  
24 argument is premised on preferred embodiments, not claim language. (ECF No. 113 at 8;  
25 *see also* ECF No. 111 at 13 (referring only to preferred embodiments).) And at the Hearing,  
26 Defendants' counsel also focused on preferred embodiments described in the  
27 specification, not claim language. Further, nothing that Defendants pointed to in the  
28 specification constitutes a clear disavowal of claim scope. (ECF No. 111 at 13, 114 at 12.)



1 Thus, Defendants have not “demonstrate[d] an intent to deviate from the ordinary and  
2 accustomed meaning of a claim term by including in the specification expressions of  
3 manifest exclusion or restriction, representing a clear disavowal of claim scope.” *Epistar*  
4 *Corp. v. Int’l Trade Comm’n*, 566 F.3d 1321, 1334 (Fed. Cir. 2009) (citation and internal  
5 quotation marks omitted). The Court declines to import limitations into these claim terms.

6 In addition, Plaintiff’s counsel pointed out at the Hearing there was no real dispute  
7 as to the meaning of “programmed with,” and Defendants’s counsel did not appear to  
8 dispute its meaning. And as “programmed with” is the only component of these claim terms  
9 the Court has not otherwise construed, it is unnecessary to further construe these claim  
10 terms.

11 In sum, the Court agrees with Plaintiff that no further construction of “redirection  
12 server programmed with a user’s rule set” / “redirection server programmed with a users’  
13 rule set” is required.

14 **B. Allegedly Indefinite Terms**

15 Plaintiff and Defendants structure this portion of their claim construction briefs  
16 differently, but the Court finds Defendants’ structure more logical because it addresses  
17 claim terms with common elements together instead of piecemeal. The parties also used  
18 this structure to present their arguments at the Hearing. Thus, the Court adopts the  
19 structure Defendants used.

20 Defendants challenge the terms discussed below as indefinite under 35 U.S.C. §  
21 112, ¶ 2. (ECF No. 111 at 6-7.) Under this statutory subsection, “a patent is invalid for  
22 indefiniteness if its claims, read in light of the specification delineating the patent, and the  
23 prosecution history, fail to inform, with reasonable certainty, those skilled in the art about  
24 the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901  
25 (2014).

26 ///

27 ///

28 ///

1. “the rule set” (claim 108) / “the modified rule set” (claims 108-110, 122-125) / “initial temporary rule set” (claims 108 and 122) / “standard rule set” (claims 108 and 122)

Claim Term	Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
“the rule set” (claim 108, last element)	Not indefinite. Plain and ordinary meaning, which is that “the rule set” in element (e) refers to the “user’s rule set correlated to a temporarily assigned network address” from element (a) as modified in claim elements (c) and (d), and later referred to as “the modified rule set” in element (e)	Indefinite.
“the modified rule set” (claims 108-110, 122-125)	Plain and ordinary meaning, which is “user’s rule set correlated to a temporarily assigned address as modified in element (c) and (d)”	Indefinite.
“initial temporary rule set” (claims 108 and 122)	Plain and ordinary meaning, which is “rule set applied by the redirection server when a user computer first attempts to connect to the public network”	Indefinite.
“standard rule set” (claims 108 and 122)	Plain and ordinary meaning, which is “a predefined rule set to be applied after the initial temporary rule set”	Indefinite.

These terms all center on the “rule set” discussed throughout the ’459 Patent and particularly in claim 108, which is partly why the Court agrees with Defendants that they should be addressed in the same section of this order. Defendants basically argue that all of these terms are indefinite because they logically should only refer to one rule set, but particularly claim 108 seems to discuss at least four different rule sets—and the terms are thus indefinite. (ECF No. 111 at 13-16.) Plaintiff responds that the “rule set” used in claim 108 is a temporary rule set assigned to a particular user, and “the modified rule set” refers to that same user’s rule set. (ECF No. 110 at 16-17, 20-21.) Plaintiff goes on to argue that “initial temporary rule set” and “standard rule set” should merely be assigned their plain and ordinary meaning, which is a rule set used for a limited amount of time when the user connects to the system, and a “pre-defined” rule set, respectively. (*Id.* at 21-22.) Overall, the Court agrees with Plaintiff.

1 More specifically, the Court agrees with Plaintiff that the rule set terms inform a  
 2 person of ordinary skill in the art (“POSA”) about the scope of the claimed invention with  
 3 reasonable certainty. Defendants’ challenge to these terms centers on claim 108, which  
 4 claims:

5 A system comprising:

6 [a] a redirection server programmed with a user’s rule set correlated to a  
 temporarily assigned network address;

7 [b] the rule set containing at least one of a plurality of functions used to  
 8 control data passing between the user and a public network;

9 [c] the redirection server being configured to automatically modify at least a  
 10 portion of the rule set while the rule set is correlated to the temporarily  
 assigned network address;

11 [d] the redirection server being configured to automatically modify at least a  
 12 portion of the rule set as a function of some combination of time, data  
 13 transmitted to or from the user, or location the user accesses; and

14 [e] the modified rule set includes an initial temporary rule set and a standard  
 15 rule set, and the redirection server utilizes the temporary rule set for an initial  
 16 period of time and thereafter utilizes the standard rule set while **the rule set**  
 is correlated to the temporarily assigned network address.

17 (ECF No. 1-1 at 19:62-20:14 (lettering and emphasis added).) The crux of Defendants’  
 18 argument is that the final, bolded appearance of “the rule set” in element [e] is indefinite  
 19 because it lacks an antecedent basis. (ECF No. 114 at 13.) “But the lack of an antecedent  
 20 basis does not render a claim indefinite as long as the claim ‘apprises one of ordinary skill  
 21 in the art of its scope and, therefore, serves the notice function required by [§ 112 ¶ 2].’”  
 22 *In re Downing*, 754 F. App’x 988, 996 (Fed. Cir. 2018) (citation omitted). And here, the  
 23 final, bolded appearance of “the rule set” does.

24 As Plaintiff argues, “the claim includes antecedent references to ‘an initial  
 25 temporary rule set’ and ‘a standard rule set’ that do not refer to these claim requirements  
 26 as ‘the rule set.’” (ECF No. 113 at 11.) Primarily for this reason, it is reasonably clear that  
 27 the final appearance of “the rule set” in element [e] refers back to the “user’s rule set  
 28 correlated to a temporarily assigned network address” described in element [a]. (ECF No.

1 1-1 at 19:62-20:14.) More generally, claim 108 is simply not as confusing as Defendants  
 2 try to make it out to be. Defendants' overly formalistic attack on this claim language ignores  
 3 the relatively forgiving standard that the claim language must only reasonably appraise a  
 4 POSA of its scope. And here, "the rule set" and the related 'rule set' terms do.

5 In sum, Defendants have not shown by clear and convincing evidence these claim  
 6 terms are indefinite.

7  
 8 **2. "initial period of time" (claims 108 and 122)**

Claim Term	Plaintiff's Proposed Construction	Defendants' Proposed Construction
"initial period of time" (claims 108 and 122)	Not indefinite; plain and ordinary meaning, which is "period of time when the initial temporary rule set is utilized before the conditions are met to apply the standard rule set"	Indefinite.

13  
 14 Defendants argue this term is indefinite because nothing in the '459 Patent explains  
 15 how long the period of time is, and is further indefinite because the patent appears to  
 16 define this term as a condition that exists until another condition is fulfilled—meaning the  
 17 condition is not triggered by a period of time at all. (ECF No. 111 at 16-17.) Plaintiff  
 18 essentially responds this does not render the term indefinite, it merely confirms that the  
 19 Court should assign this term its plain and ordinary meaning. (ECF No. 110 at 22-24.)  
 20 Plaintiff writes:

21 For example, when a person in conversation refers to their "initial reaction"  
 22 to something, the person is referring to their first reaction. Such a statement  
 23 is usually followed by their reaction after more time passed, or they learned  
 additional information. It does not require a specific amount of time to be understood.

24 (*Id.* at 23.) Plaintiff uses this example to support its view that the initial period of time is the  
 25 period of time where the temporary rule set is used, before switching to the standard rule  
 26 set. (*Id.*) The Court agrees with Defendants.

27 The issue with Plaintiff's argument is highlighted by Plaintiff's proposed  
 28 construction: plain and ordinary meaning, which is "period of time when the initial

temporary rule set is utilized before the conditions are met to apply the standard rule set[.]”

So Plaintiff defines “initial period of time” as not a period of time at all, but as all time before “the conditions are met.” (ECF No. 110 at 22.) The Court does not agree this is the ‘plain and ordinary meaning’ of an “initial period of time.” If it was, the Court could never wait 20 minutes because 20 minutes may never come unless a mysterious conditional rule was satisfied. Said otherwise, Plaintiff’s absurd argument attempts to make time conditional on something that is not time. The Court cannot agree to give this term an impossible meaning, and call it ‘plain and ordinary.’ Moreover, Plaintiff’s example of the ‘conversational’ use of ‘initial period of time’ is unpersuasive because it does not speak to how a POSA would read this term in an attempt to recreate the invention embodied in the ’459 Patent.

For the same reasons, the Court is persuaded by Defendants’ contrary argument this term is indefinite. In their responsive brief, Defendants primarily argue the Court should find this term indefinite because Judge Guilford did in the California Order, but they also point to the three reasons Judge Guilford found “initial period of time” indefinite. (ECF No. 114 at 14-15.) Those three reasons are persuasive. Specifically: (1) this term defines time as the condition itself without specifying the required length of time (as mentioned above); (2) the specification never refers to an initial period of time; (3) and Plaintiff’s proposed construction is entirely unbounded, making it impossible for a POSA to understand the scope of this term. (*Id.*) The Court agrees these three reasons are valid, and weigh in favor of finding “initial period of time” indefinite.

In sum, “initial period of time” is indefinite because a POSA would not be able to identify its boundaries with reasonable certainty.

**3. “computer network” (claims 98 and 119) / “user side [of the server]” (claims 98-99, 119-120) / “network side [of the server]” (claims 98-99, 119-120)**

Claim Term	Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
“computer network” (claims 98 and 119)	Not indefinite; plain and ordinary meaning	Indefinite.



1	“user side [of the server]” (claims 98-99, 119-120)	Not indefinite; plain and ordinary meaning	Indefinite.
2			
3	“network side [of the server]” (claims 98-99, 119-120)	Not indefinite; plain and ordinary meaning	Indefinite.
4			

5 Defendants argue these terms are indefinite because the '459 Patent's claims refer  
6 to what appear to be two distinct networks—a public network and a computer network—  
7 but a POSA would not understand the relationship between the redirection server and  
8 these two networks from the patent's claims and specification, and, at times, these two  
9 different networks appear to be the same thing. (ECF No. 111 at 17-18.) Similarly,  
10 Defendants argue the “user side” and “network side” terms are indefinite because a POSA  
11 would not reasonably understand how to connect the redirection server to the public  
12 network from reading the '459 Patent, and therefore could not say which was the user  
13 side, or which was the network side. (*Id.* at 18-19.) Said otherwise, Defendants argue  
14 these terms are indefinite because a POSA would not understand how to configure the  
15 network embodied in the '459 Patent from reading about the relationship between these  
16 terms in the '459 Patent itself.

17 Plaintiff counters that these “terms are not indefinite because they are being used  
18 according to their plain and ordinary meanings to” a POSA. (ECF No. 110 at 17.) Plaintiff  
19 points to an expert declaration to argue that a POSA would understand the “computer  
20 network” referred to in the '459 Patent means the networking infrastructure required to  
21 connect the various parts of the patented system, which can be conceptualized as the  
22 arrows in the diagrams in the patent that connect the system's constituent parts. (*Id.* at  
23 17-19.) As to “user side” and “network side,” Plaintiff argues Defendants seek to create  
24 ambiguity where none exists because a POSA would understand how the pieces of the  
25 claimed system fit together. (*Id.* at 18-19.) The Court generally agrees with Plaintiff.

26 The Court does not find the relationship between the components identified by  
27 these claim terms confusing. Taking claim 98 as an example, it is reasonably clear that  
28 “user side” and “network side” refer to the two logical sides of the redirection server, and



the “computer network” is the portion of the system that connects the “network side” of the redirection server to the internet. (ECF No. 1-1 at 18:51-57.) Figure 2 in the ’459 Patent also supports this understanding. (*Id.* at 7.) It shows that the redirection server sits logically between the user’s computer and the internet, supporting the view that the redirection server would have a “user side” and a “network side.”<sup>10</sup> (*Id.*) And as the “computer network” is connected to the “network side” of the redirection server, it is presumably the arrow coming off the right side of the redirection server in Figure 2, which connects the redirection server to the internet. (*Id.*) In general, these terms all describe the logical relationship between the user, the redirection server, and the internet. The logical relationship between those component parts is reasonably clear. The Court finds that Defendants’ arguments as to these terms attempt to overcomplicate something that is conceptually fairly simple. (ECF No. 114 at 15-16.)

In sum, Defendants have not shown by clear and convincing evidence these claim terms are indefinite.

**4. “location [or locations] the user accesses” (claims 91-98, 108-111, 114, 117-118)**

Claim Term	Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
“location [or locations] the user accesses” (claims 91-98, 108-111, 114, 117-118)	Not indefinite; plain and ordinary meaning	Indefinite.

Defendants finally argue the claim terms including the word “location” are indefinite because they are subject to multiple reasonable interpretations. (ECF No. 111 at 19.) Defendants therefore insist they do not inform a POSA about the scope of the invention with reasonable certainty. (*Id.*) Defendants go on to argue that Plaintiff is arguing for plain and ordinary meaning here so it can later pick whatever reasonable interpretation of this

<sup>10</sup>Plaintiff presented a helpful demonstrative slide at the Hearing labelling Figure 2 with “network side,” “user side,” and “computer network,” where “computer network” was a highlighted area covering both the ‘Internet’ and the arrow pointing from the redirection server to the ‘Internet.’

1 term best suits its needs in this case, which violates the principle that patents should only  
2 have a single scope—citing a Federal Circuit case stating that “[a] patent may not, like a  
3 ‘nose of wax,’ be twisted one way to avoid anticipation and another to find infringement.”  
4 (*Id.* at 20-21 (citing *Amazon.com, Inc. v. Barnesandnoble.com, LLC*, 239 F.3d 1343, 1351  
5 (Fed. Cir. 2001)).) Plaintiff responds simply that location has a plain and ordinary meaning,  
6 meaning a network location the user accesses. (ECF No. 110 at 24.) “For example, a user  
7 going to ‘www.google.com’ is a ‘location the user accesses.’” (*Id.*)

8 Plaintiff’s counsel reiterated this point at the Hearing, stating that “location the user  
9 accesses” means exactly that—a network location the user actually accessed. In light of  
10 this representation from Plaintiff’s counsel that this term has a fixed meaning in this case,  
11 Defendants’ ‘nose of wax’ argument is unpersuasive. And as that argument is really  
12 Defendants’ only argument as to this term, the Court is unpersuaded this term is indefinite.

13 In sum, Defendants have not shown by clear and convincing evidence this claim  
14 term is indefinite.

## 15 **V. CONCLUSION**

16 The Court notes that the parties made several arguments and cited to several cases  
17 not discussed above. The Court has reviewed these arguments and cases and determines  
18 that they do not warrant discussion as they do not affect the outcome of this claim  
19 construction.

20 It is therefore ordered the claim terms discussed herein have the meaning the Court  
21 assigned them herein for purposes of this litigation, and are or are not indefinite, as also  
22 described herein.

23 DATED THIS 8<sup>th</sup> day of May 2020.



24  
25  
26 MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE